

CRIMINAL APPEAL NO. 282 OF 1994.

Date of decision: 26.11.1996

For approval and signature

The Honourable Mr. Justice B.C. Patel

AND

The Honourable Mr. Justice R. R. Jain

Miss Banna Dutta, advocate for the appellant.

Mr. S.R. Divetia, A.P.P. for respondent-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram:B.C.Patel & R.R.Jain,JJ.

November 26, 1996.

Oral judgment (Per Jain, J.)

The appellant/original accused has been convicted for life imprisonment for commission of offence under Section 302 of the Indian Penal Code by the learned Additional Sessions Judge, Panchmahals, Camp at Dahod, in Sessions Case No.156 of 1992 vide his judgment and order dated 22.2.1994. Aggrieved by the order of conviction, the appellant has preferred this appeal assailing the

judgment.

Briefly stated the facts giving rise to this case are as under:

On 11/12-10-1991 at about 9 P.M., the appellant alongwith his wife, deceased Babli, left for Dahod for seeing Garba. On way to Dahod, he caused death of his wife by throttling and remained absconded for quite a long time. Next morning, when P.W.2, the complainant, uncle of the deceased, was passing through Garbada road near Sindhi society, he saw a group of persons assembled there, so he alighted from his cycle and went to see as to what has happened. There he saw a dead body covered with cloth and lying near the road. He unveiled just to see the deadbody of his niece, deceased Babli. He therefore immediately went to his village to inform the mother, brother and other family members of the deceased. On this information, mother and other relatives proceeded towards the scene of offence and this witness went to the police station to lodge FIR, Ex.15. Thus, on the strength of the FIR Ex.15, investigation was carried and finding substance, case was registered against the appellant under Section 302 of the IPC. When the matter came up before the learned Additional Sessions Judge, the prosecution has examined as many as seven witnesses including the investigating officer. It will not be out of place to mention at this stage that none of the witnesses is an eye witness. The entire case of prosecution rests on circumstantial evidence only. Therefore, while dealing with circumstantial evidence the Court has to bear in mind that in order to hold a person guilty, the prosecution must establish the chain-link and that the circumstances should be so strong and amenable only to one view. In other words, the circumstances shown should not lead to any other view. In this case, the learned Additional Sessions Judge has dealt with circumstantial evidence in paragraph 20 of his judgment which are as under:

1. The appellant and the deceased were last seen together by the witnesses.
2. Slippers of appellant were found near the dead body.
3. Conduct of the accused after the incident.
4. Motive.

The prosecution has examined P.W.3, a child witness, Mukesh Ditiyabhai, Ex.16. He is the brother of deceased Babli. In his oral testimony he has categorically stated that in the early hours of the fateful night he, the deceased, the accused and his cousin sister, Sharda, took

their supper (dinner) and thereafter decided to go to Dahod to see Garba and accordingly they all left together. On their way to Dahod, he and his cousin sister Sharda were walking little ahead of the deceased and the appellant and fell in company of others and thus got separated. They went to Dahod and saw Garba in Padav area and came back in the same night. It is also stated that they did not notice the appellant and the deceased in the Garba programme at Dahod till they returned. He came to know about the death of his sister only in the morning when his mother started weeping saying that Babli has died. Of course, the witness has been cross-examined but he has not been shaken on the point of 'last seen together', nor any counter suggestion had come forward from the defence side, therefore, the fact that the accused and the deceased were last seen together has gone unchallenged. On this aspect, the learned Judge has also relied upon the evidence of P.W.6, Bai Vasni, the mother of the deceased, who has been examined at Ex.20. Even to this witness also no suggestion has been put by the defence on the material aspect of last seen together and, therefore, the learned Judge has rightly come to conclusion that the deceased and the appellant were last seen together in the fateful. The witnesses are otherwise trustworthy and reliable. Under such circumstances, as a cardinal rule, the one who is alive, i.e., the appellant is answerable to explain the presence of one who is no more, i.e., the deceased. In this case, neither in the cross-examination of any of the witnesses nor in the further examination under Section 313 of the Criminal Procedure Code the appellant has explained the absence of deceased Babli or has challenged the circumstance of last seen together and, therefore, the learned Judge has rightly relied upon this circumstance.

The prosecution has been able to establish by concrete evidence that slippers of the accused were found near the body of the deceased. On this question the prosecution has examined the mother of the deceased. P.W.6, Bai Vasni, in her testimony at Ex.20 has said that since five days prior to the incident the accused and the deceased were staying with her and could identify the footwear put on by the accused, that is, slippers. Not only that she was able to identify but she knew the colour and on being shown the muddamal article she has identified the slippers to be of the appellant/accused. This witness has also been cross-examined at length but this part of the evidence goes unchallenged and, therefore, this circumstance that the slippers of the appellant/accused were found near the deadbody also remains established beyond any doubt. Therefore, the learned Judge has

rightly held that the slippers belong to the accused and were found near the deadbody. This circumstance amply proves that having left together with the deceased the appellant was with her till he got separated. If this is so it is for the appellant to explain that she was alive when got separated.

The next circumstance is the post-incident conduct of the accused. Ordinarily, it is expected that when husband and wife leave together for a limited purpose, the couple is expected to return together the moment purpose is over. If for some reasons one of them does not return, the other one of them is expected to report to the family members about the absence or whereabouts of one who has not returned. Having left for limited purpose of seeing Garba the appellant was expected to return by next morning. Not only that the appellant did not report to the place of in-laws but he remained absconded for a period of more than three months and was arrested from Baroda at the instance of one of the relatives of deceased Babli as he was noticed abruptly. As regards his absence for a long period of three months he has not tendered any explanation. This is also one of the strongest circumstances reflecting upon the post incident conduct of the appellant.

The learned Judge has also dealt with the motive for commission of the offence. The prosecution witness Bai Vasni has categorically deposed that owing to dispute with regard to pledge of ornaments the appellant had some difference of opinion and had dispute with the deceased. She has also stated that the appellant suspected about chastity of the deceased and was not allowed to talk with any male member of society and relation. On close scrutiny of evidence, we are of the opinion that even on this count also the defence side has not been able to shake the witness. In other words, this evidence goes unchallenged. Thus, the motive also stands established. Thus, the chain of circumstances, i.e., the appellant was last seen together with the deceased, belongings of the appellant were found near the dead body of Bai Babli, post death conduct of the appellant remained highly suspicious and unexplained supported by the motive leading to cause the crime, complete the chain-link connecting the accused with commission of the offence. The learned Judge has dealt with all these aspects in details while appreciating the evidence. The learned advocate for the appellant has not been able to point out anything from the record which can prompt us to interfere with the view taken and reasons assigned by the learned Additional Sessions Judge.

Mr. Divetia, learned A.P.P., has invited our attention to Ex.12, post-mortem notes. In column 20, it is stated that undigested rice and water was found from the stomach of the deceased during examination. Therefore, the evidence of the child witness Mukesh, P.W.3 (Ex.16), that before leaving for Garba, he, Sharda, the deceased and the appellant took rice and 'dal' in supper, gets corroboration. This circumstance adds to the trustworthiness and reliability of prosecution witnesses.

Our attention is also drawn to column 23 of the post-mortem notes showing cause of death. It is asphyxia due to throttling. With the chain-link of the circumstances discussed above, the Court is left with no alternative than to hold that it is the appellant only who has committed the crime and caused death of deceased Babli by throttling.

We have gone through the evidence on record and the appreciation. Broadly we are in agreement with the reasoning given by the learned Additional Sessions Judge and, therefore, we are not discussing in detail the evidence of each and every witness in view of the observations made by the Supreme Court in the case of State of Karnataka v. Hemareddy, AIR 1981 SC 1417 which reads as under:

".....This Court has observed in *Girila Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate Court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

Except what is discussed above, no other points are canvassed and urged by the learned advocate for the appellant as a result of which and in the facts and circumstances of the case we find no merit in this appeal. Hence the appeal is dismissed. The impugned judgment and the order convicting the appellant under Section 302 of the IPC is hereby confirmed. Order accordingly.